



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

July 22, 2009

The Honorable Robert Wirsch, Chair
Committee on Small Business, Emergency Preparedness,
Workforce Development, Technical Colleges and Consumer Protection

Re: SB 13 relating to refunds of overcharges by commercial mobile radio service providers, actions against radio service providers, and providing a penalty.

Dear Senator Wirsch:

Thank you for the opportunity to provide testimony on SB 13. The Department of Agriculture, Trade & Consumer Protection supports this legislation because it recognizes the legitimate expectation of persons owed a refund for overcharges on a billing statement.

The department has received numerous complaints from consumers who have waited an unreasonably long time to obtain a refund or a credit on their "next" bill for charges for which consumer is not responsible, i.e., overcharges. Some consumers have waited through numerous billing cycles and place numerous calls to "remind" the cell phone service provider that the consumers are entitled to a refund. Some consumers have waited so long that they give up the refund because time and aggravation involved. SB 13 requires cell phone providers to refund these charges within a reasonable period of time.

SB 13 also requires cell phone providers that are aware or should reasonably be aware of an overcharge to refund amount of the overcharge to **all** customers affected by the overcharge, not just to those who complain. The department knows of instances where providers have only refunded money if a customer complained even though the provider knew precisely who and how many of their other customers were affected. This practice amounts to keeping money to which the provider is not entitled. The department believes that this is grossly unfair to consumers. SB 13's requirements to refund all overcharges will hopefully ensure that this type of practice doesn't recur.

For these reasons we support SB 13 and thank you for the opportunity to testify.

Respectfully,

Janet Jenkins
Administrator
Division of Trade & Consumer Protection

Agriculture generates \$51.5 billion for Wisconsin



JULIE LASSA

STATE SENATOR

Senate Bill 13 Testimony
Senate Committee on Small Business, Emergency Preparedness, Workforce Development,
Technical Colleges and Consumer Protection
Room 400 SE
1:05 p.m.

Chairman Wirsch and Committee Members,

Thank you for the opportunity to provide testimony today on Senate Bill 13, the Cell phone Accountability and Liability Legislation (CALL). This legislation uses the same language as the amended 2007 SB 320, which passed the Senate last year, 27-5, with strong bi-partisan support. I am reintroducing CALL on behalf of my constituent, Dennis Goetsch, who unfortunately is unable to appear here today, but who has provided copies of his correspondence for me to distribute to you.

After calling to dispute roaming charges on his cell phone bill, the customer service representative Dennis spoke with explained that the company was aware that a technical problem had occurred with its tower so they would credit his account accordingly. Dennis then inquired about all of the other costumers who were overcharged, where he was then told that the company would not reimburse other customers unless they individually called to complain.

After expressing his disapproval with the company's policy through a letter, Dennis filed a complaint with the Department of Agriculture, Trade and Consumer Protection. DATCP issued a civil investigative demand (which is similar to a subpoena that permits DATCP to obtain information) to the company, asking for the names of customers incorrectly billed. As a result of the investigation, the company issued \$30,700 in credit to 3,601 customers.

By looking at the numbers, it is apparent that the charges did not amount to very much for each individual customer. Many customers likely did not even notice the additional charges, allowing the cell phone service provider to profit from its mistake. This type of practice is unacceptable for a multi-billion dollar industry and is why I have introduced CALL.

CALL encourages cell phone service providers to exercise corporate responsibility by requiring them to refund any amount they overcharge customers no later than 90 days after they are made aware of or should reasonably be aware of the overcharge. If the provider fails to refund the money within that time period, it is required to pay twice the amount that it overcharged. The bill also allows the DATCP or a district attorney to commence an action on behalf of the state to recover a forfeiture of not more than \$200 for the first violation and not more than \$500 for each

subsequent violation. The bill also provides that a person who is injured by the company's failure to credit the overcharge may bring an action against the cell phone provider for temporary or permanent injunctive relief or for three times the amount of the overcharge, or \$200, whichever is greater, together with costs, including reasonable attorney's fees.

The purpose of the private cause of action is to serve as an incentive for the private bar to bring enforcement actions rather than just the state due to the fact that the DATCP has limited staff and the Department of Justice has limited attorneys. In addition, with more people keeping tabs on impermissible activity and taking action to stop it, businesses are more likely to follow the law.

I worked extensively with DATCP and Legislative Council, as well as Senator Kedzie, in appropriately determining how a provider "should reasonably be aware" of the overcharge. This was a difficult task, given that we want to protect consumers but we do not want to hold the cell phone providers to an unattainable standard where they are taken to court for simple mistakes they never realized had occurred. We ultimately agreed upon the language that "if a customer reports an overcharge to a commercial mobile radio service provider, it is presumed that the commercial mobile radio service provider should reasonably be aware of similar overcharges to the customer or to other customers of the commercial mobile radio service provider." We use the word "presumed" because it gives the provider a chance to rebut the claim if it can show facts to support that it was an isolated error, but the language remains comprehensive enough to allow for proper enforcement.

Although I anticipate that some cell phone providers will argue that these new regulations will cause them increased costs for investigating errors, the bill prohibits providers from imposing an additional charge upon a customer solely as a consequence of compliance with this requirement. The bottom line is that if providers make a mistake, they have the obligation to fix it. We know from Dennis' experience that the company knowingly did not refund money it overcharged.

By overcharging their consumers, cell phone providers are taking money that is not theirs. We do not know how many small overcharges have gone unnoticed by consumers thereby allowing providers to profit from their mistakes, but we do know that this multi-billion dollar industry can afford to do its job and return money to which it is not entitled.

TO: Members, Wisconsin Senate Committee on Small Business, Emergency Preparedness, Technical Colleges, and Consumer Protection
FROM: K. Dane Snowden, Vice President, External & State Affairs
RE: **Opposition to Wisconsin Senate Bill 13**
DATE: July 21, 2009

I write to share with you CTIA-The Wireless Association's opposition to Wisconsin Senate Bill 13, which would mandate a process for wireless carriers to reimburse customers for certain charges. Although the bill is well-intentioned, CTIA believes that it is unnecessary, preempted by federal law (specifically Section 332(c)(3)(A) of the Communications Act of 1934),¹ and potentially harmful to the embodiment of this federal law - the uniform framework that has regulated the wireless industry since Congress enacted this section in 1993. This national framework has allowed wireless carriers to provide an ever-growing number of consumers with lower prices and innovative devices and applications. None of which would have been possible if there was differing, state-by-state regulation of carriers as proposed in SB 13.

The wireless industry has experienced unprecedented growth since Congress' decision. In the last five years alone, wireless subscribership has increased from 139 million customers to 270 million. In that period, the industry has also produced cutting edge smartphones and mobile applications, bringing broadband to the individual and dramatically changing the way we transact commerce, live, and learn. While delivering these new products and services, wireless carriers have also been able to keep prices low, increase investment in wireless infrastructure, and adopt pro-consumer policies.

Because of increasing customer satisfaction, we believe SB 13 is unnecessary. Customers are happy with their wireless service and carriers are constantly responding to consumer demands and adopting consumer-friendly policies. This is best reflected in Consumer Reports' cell phone service survey, which was released in January, and found that, "[o]verall, cell phone service has become significantly better."² Consumer Reports goes on to say that "[c]ontract terms for cell phone service are less onerous, and there [are] fewer problems with call quality ..." Sixty percent of Consumer Reports' readers, in fact, were either completely or very satisfied with their service. This improvement "means cellular satisfaction is now closer to the average among all services" Consumer Reports rates. In addition, the United States Government Accountability Office (GAO) recently found that 84 percent of wireless users were either very or somewhat satisfied with their wireless phone service.³ Both the Consumer Reports' survey and the GAO's findings are examples of why legislation like SB 13 is unnecessary. Carriers continue to respond to consumer demands, which has resulted in increasing consumer satisfaction. All of this is being done without state statutory mandates like those proposed in SB 13.

¹ 47 U.S.C. § 332(c)(3)(A).

² Consumer Reports, "Best Cell Phone Service," January 2009.

³ United States Government Accountability Office, "Preliminary Observations about Consumer Satisfaction and Problems with Wireless Phone Service and FCC's Efforts to Assist Consumers with Complaints," Statement of Mark Goldstein, June 17, 2009.

Moreover, SB 13 is preempted by federal law, specifically § 332(c)(3)(A) of the Communications Act of 1934, which provides in relevant part:

[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

SB 13 effectively regulates the rates that wireless carriers can charge and is thus preempted. Differing state laws, like SB 13, that seek to regulate the rates of wireless carriers would be in direct conflict with the national framework envisioned by § 332 and the benefits it has provided. Congress adopted this uniform framework and, as previously noted, this experiment has paid dividends. Wireless prices have declined 80 percent since 1993 (based on average revenue per minute), while the competitive wireless industry continues to deliver innovative new products, services, and consumer policies.

In closing, SB 13 is unnecessary, preempted by federal law, and threatens the very benefits that this law has reaped. We, therefore, respectfully request that you oppose Senate Bill 13. If you have any questions or need more information, please do not hesitate to contact me at (202) 736-3212 or dsnowden@ctia.org.

Sincerely,



K. Dane Snowden
Vice President
External & State Affairs

